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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,164	01/20/2004	Richard L. Weaver	433-11US	6642
23716	7590	11/25/2005	EXAMINER	
ANTHONY ASQUITH 28-461 COLUMBIA STREET WEST WATERLOO, ON N2T 2P5 CANADA			ALIMENTI, SUSAN C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/759,164	WEAVER, RICHARD L.	
	Examiner	Art Unit	
	Susan C. Alimenti	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 8, 10 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is meant and encompassed by the phrase "in the order of," when defining the weight acting on the floor of the device.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-7, 9, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giordano et al. (US 6,851,389), in view of Collis (US 1,192,867).

Regarding claim 1, Giordano et al. (Giordano) discloses the claimed invention except the trays that fit inside the cage are open at the top, instead of being completely enclosed and having a front door. Giordano's poultry transport comprises a cage 2 suitable for housing live poultry in transport, having a frame work comprising metal uprights 6, and members 6, 7, 8, fixed together to form an open, substantially rectangular framework.

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Regarding claims 1, 4, 18 and 19, the individual cage 2 is a sturdy, stand alone, self-contained structure that is physically capable of being lifted, via forklift, on and off a transport truck as a unit (Giordano, col.3, lns.25-28). The framework is so arranged to define and receive poultry receiving trays 4.

Regarding claims 1 and 6, each tray has a single molded plastic unit, which defines a bottom and two side panels, and front and back lattice walls allowing for proper ventilation (Giordano, col.3, lns.10-14). Regarding claims 1 and claim 3, the trays may either have no perforation or optionally comprise small holes or elongated slits in the bottom thereof (Giordano, col.3, lns.19-24).

The trays 4 are open at the top, which requires the user to maintain great care in loading and unloading the poultry therein. Giordano teaches in Figures 1-3 how the poultry is to be loaded, i.e. from bottom to top, however, with the trays being open at the top this allows for the birds to fly up or extend an appendage above the top edge of each tray, providing difficulty in closing adjacent trays, and further threatens injury to the birds. Collis discloses a similar structure for housing poultry, however, Collis teaches enclosing each compartment individually and providing a pivoting front door allowing access to the interior. Collis explains that with this door, "access to one of the compartments can be had without interfering with its companion compartment" (Collis, col.4, lns.67-72). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Giordano's transport device by making each tray completely enclosed and providing a front door for access to the exterior, in order to provide the user with ease in loading and unloading the poultry contained therein.

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Regarding claims 7 and 9, members 7, 8, and 9 cooperate to form a vertical fence panel that holds the uprights 6 in place and prevents the trays 4 from falling inwards or outwards, and is further considered to be a type of lattice form.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giordano, in view of Collis, as applied to claim 1 above, and further in view of Olson et al (US 2,212,549).

Giordano, as modified, discloses the claimed invention except the floor panel is not positively disclosed as being domed. Olson et al. discloses a poultry house having a solid paneled floor 16, that has a slight angle or dome. It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of Giordano's floor since it has been held that "there is no invention in merely changing the shape or form of an article without changing its function, except in a design patent." *Eskimo Pie Corp. V. Levous et al.*, 3 USPQ 23.

Allowable Subject Matter

6. Claims 8, 10, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897. The examiner can normally be reached on Monday-Friday, 9am-5pm.

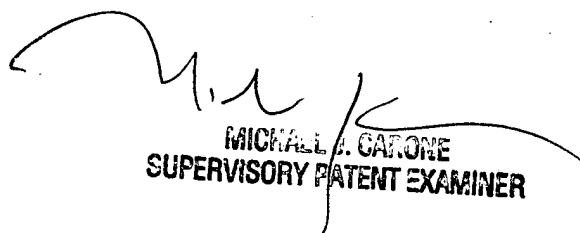
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Susan C. Alimenti



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER